



**Department of Energy
Acquisition Regulation**

**No. 2008-03 Revision 1
Date 03/11/08**

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: Drug Testing and Security Clearances of Contractor Personnel

References:

Department of Energy Acquisition Regulation (DEAR) 48 CFR 9
Workplace Substance Abuse Programs at DOE Sites 10 CFR 707
Memorandum from the Secretary; Decisions Regarding Drug Testing for Department of Energy Positions
that Require Security Clearances, dated September 14, 2007

When is this Acquisition Letter Revision (AL) Effective?

This AL Revision is effective upon issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Who is the Point of Contact?

Richard Langston, Office of Procurement and Assistance Policy, at (202) 287-1339, or by e-mail at Richard.Langston@lhg.doe.gov; Stephen Law at (202) 586-4321 for NNSA contracts; Jacqueline Rogers at (202) 586-4714 or Bill McArthur at 301-903-6061 for questions relating to 10 CFR 707.

Visit the website at http://management.energy.gov/policy_guidance/procurement_acquisition.htm for additional information on Acquisition Letters.

What is the Purpose of this AL?

This AL prescribes guidance for contracting officers to implement workplace substance abuse programs at DOE sites requiring facility and security clearances for contractor and subcontractor personnel.

What is the purpose of this AL Revision?

This AL revision provides information on the consultations required by 10 CFR 707 and prescribes guidance for contracting officers to modify affected contracts to implement workplace substance abuse programs at DOE sites affected by the Department's expansion of the definition of Testing Designated Positions under 10 CFR 707 to include all contractor and subcontractor personnel with security clearances must be tested to demonstrate the absence of any illegal drug. The Background and Guidance sections have been updated to reflect steps taken and outline the next steps.

What is the Background?

On September 14, 2007, the Secretary of Energy issued a memorandum stating that positions requiring security clearances have the potential to significantly affect the environment, public health, and safety or national security. Accordingly, the memorandum stated that all positions requiring a security clearance are considered to be *testing designated positions (TDP)* and employees in TDP are thus subject to random and for cause drug testing. In addition, applicants for TDP are subject to drug testing before final selection. A copy of the Secretary's memorandum, the 10 CFR 707 regulation, and questions and answers from the public consultation are at <http://www.hss.energ.gov/HealthSafety/WSIIP/rulc851/rnlc707.html>.

DOE has determined that it is necessary to implement the Secretary's memorandum immediately for contractors performing work at DOE-controlled sites. Although contracts containing DEAR 970.5223-4 already have a drug testing program, the determination to extend that coverage to all contractor employees in TDP with security clearances requires consultation with the contractors as specified in 10 CFR 707.7(b)(4). DOE performed the required consultation through the use of four televideo conferences held on January 16, 17, 22, and 23, 2008 which generated questions and answers that were posted on the Safety and Health Home Page identified above. The consultation process has thus been completed. Contractors whose employees are represented by unions should consult with the unions in accordance with the National Labor Relations Act and/or any other applicable legal requirements including the constraints set forth in 10 CFR 707.15.

Contractors with personnel who hold security clearances but perform work off site will be covered later following completion of a rulemaking to amend the DEAR Security clause. This amendment was published in the *Federal Register* on February 19, 2008 (73 FR 9071) for public comment.

What is the Guidance Provided by this AL?

1. DOE Contracting Officers shall modify all contracts (see sample attached) containing the clause at 970.5223-4, Workplace Substance Abuse Programs at DOE Sites as required by 923.570-2 and 970.2305-4. The modification should cite the authority of the changes clause, FAR 52.243-1, -2, or -3, and explain the nature of the change, that is: 1) the definition of Testing Designated Positions has been changed to include all contractor personnel with security clearances; 2) the percent of personnel to be randomly tested on an annual basis has been decreased from 50% to 30%; and 3) a revised Workplace Substance Abuse Program plan should be submitted within 30 days from receipt of this notice.

2. Once the contractor's Workplace Substance Abuse Program plan is submitted for approval, it must be coordinated with and approved by the Head of the Field Element or the sponsoring program or staff office at Headquarters.
3. If a contractor requests an equitable adjustment, a copy will be furnished to the organization sponsoring the contract work.